

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 22, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

General Lease No. S-5386

Hawaii

Amendment of Grant of Term, Non-Exclusive Easement to the County of Hawaii
for Access and Utility Purposes, General Lease No. S-5386, Keahuolu, North
Kona, Island of Hawaii, Tax Map Key: 3rd/ 7-5-05: 07 por.

APPLICANT:

County of Hawaii

LEGAL REFERENCE:

Section 171-95(a)(3), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Keahuolu, North Kona, Island of Hawaii, Tax
Map Key: 3rd/ 7-5-05: 07 por., as shown on the attached map labeled Exhibit A.

AREA:

2.712 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Industrial (ML-20)

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____
NO X

CURRENT USE STATUS:

Partly encumbered by Grant of Non-Exclusive Easement No. S-5386 dated September 22, 2003 (but effective as of May 27, 1994) and issued to the County of Hawaii for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair and realign "Easement A" for ingress, egress and utilities purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on March 8, 1994 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS:

None.

REMARKS:

The Division of State Parks has had control of the Old Kona Airport (OKA) area under Executive Order No. 2876 since 1977. The County of Hawaii has had use of the subject easement area (Easement A) at OKA intermittently from about the same time. The Board of Land and Natural Resources entered into General Lease No. S-4565 on September 28, 1977 with the County covering the 14.082-acre park site near the southern end of the OKA as well as Easement A.

On February 28, 1987, a second lease to the County was executed, General Lease No. S-5156, covering an expanded park site of 34.848 acres at the southern end of OKA. The expiration date of this lease is February 28, 2027. The second lease superseded GL No. S-4565. It did not include the subject easement area because the expanded park abutted Kuakini Highway, thereby allowing direct access.

At its meeting of May 27, 1994, the Board approved a term easement in favor of the

County covering the subject Easement A. However, the instrument granting the easement, General Lease No. S-5386, was not executed until September 22, 2003. The termination date of this grant of easement is May 26, 2009.

At its meeting of November 16, 2007, Item E-2, the Board approved as amended a request for a withdrawal and set aside of the bulk of the OKA lands to the County for park purposes. However, the Board reserved to State Parks an area of approximately 5.000 acres for State Parks' baseyard. Also specifically reserved from the set-aside to the County is Easement A which provides access to the baseyard.

Presently, Easement A is also the primary public access to the northern portion of OKA. The County's plans for the park contemplate the main public access being realigned in a way so that Easement A will no longer be required for County or public access.

By letter dated April 30, 2009, the County's Corporation Counsel requested a renewal of the grant of easement for three years, or "until we can reach some agreement with the State on a final disposition for the Old Kona Airport". The letter explains that master plan for the County's OKA park improvements is still in development. See Exhibit B attached.

Staff recommends an extension of ten years to allow adequate time for the planning issues to be resolved to the satisfaction of State Parks and the County.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

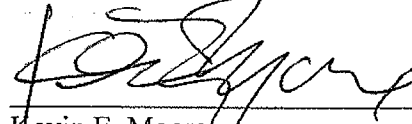
Due to the short amount of time between the receipt of the County's request and the termination date of the easement, staff did not have an opportunity to solicit comments from a wide range of government agencies. Also, because the subject lands are not ceded lands and the requested use is merely an extension of an existing use, staff believes that the standard review and comment period is not required in this case. However, staff did send a draft of this submittal to State Parks and to the County for comment. Neither had any objection to a ten-year extension of the term of the easement.

RECOMMENDATION: That the Board:

1. Authorize the amendment of Grant of Non-Exclusive Easement, General Lease No. S-5386, to extend the termination date of the easement to May 26, 2019 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current ^{term} easement document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thiel, Chairperson

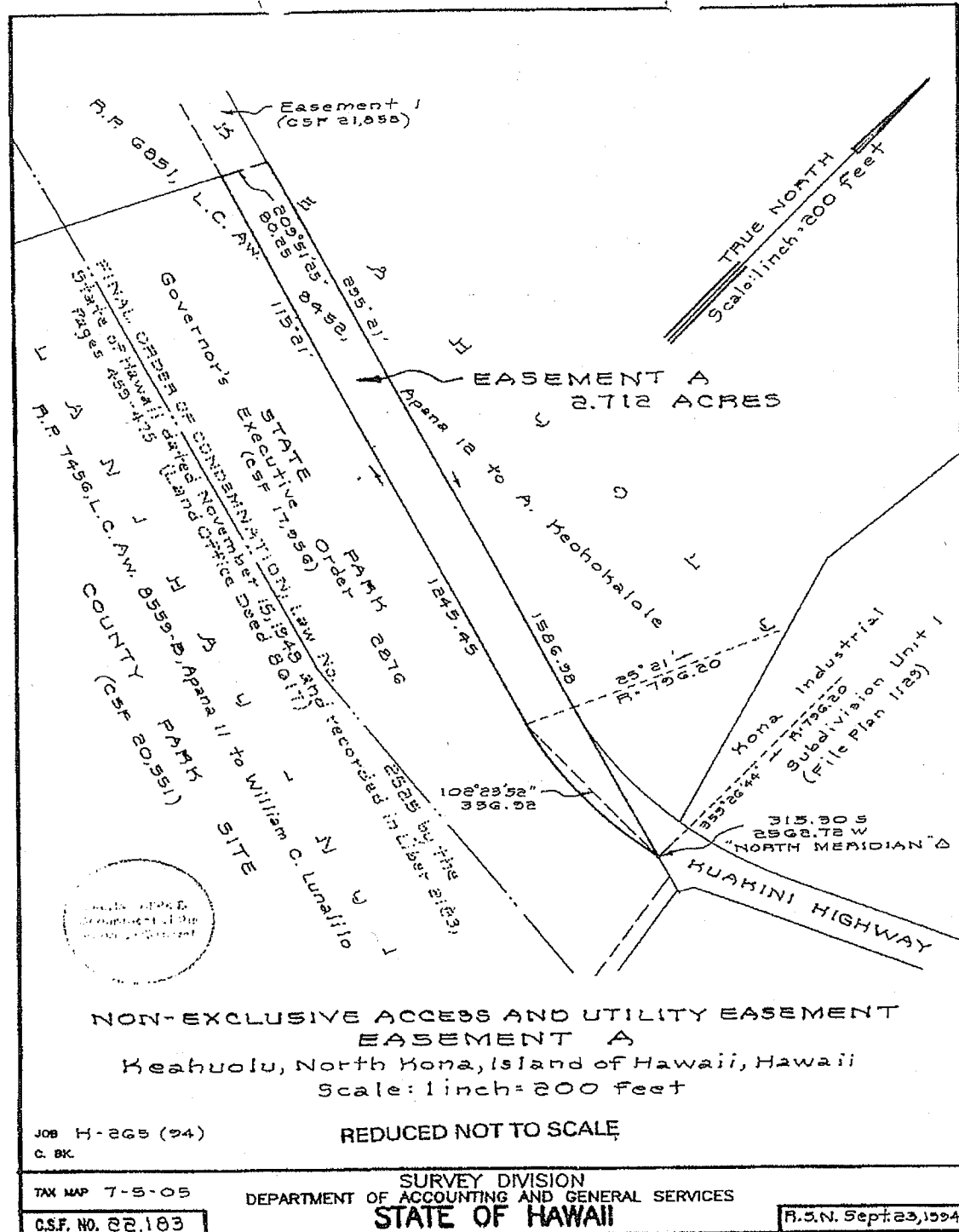


EXHIBIT A

May 22, 2009

William P. Kenoi
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Katherine A. Garson
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawai'i 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

April 30, 2009

Mr. Kevin Moore, Land Agent
Department of Land and Natural Resources
State of Hawai'i
75 Aupuni Street
Hilo, Hawai'i 96720

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RECEIVED
CORPORATION COUNSEL
HAWAII

Dear Mr. Moore:

Re: Old Airport Road (Kuakini Extension)
Grant of Non-Exclusive Easement S-5386

It has come to our attention that the above-entitled easement is due to expire on May 26, 2009.

While we thought we would have a master plan for the Old Kona Airport improvements, we are still developing plans for it. Therefore, we would like to renew the easement for three years, or until we can reach some agreement with the State on a final disposition for the Old Kona Airport. Please let us know what steps we need to take to renew this easement.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Takase".
GERALD TAKASE
Deputy Corporation Counsel

GT/de

cc: Bobby Command, Kona Mayor's Office
Robert Fitzgerald, Parks & Recreation

Hawai'i County is an Equal Opportunity Employer and Provider

EXHIBIT B